Single Bench (1)

03

or 1602

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 67 /2005

PETITIONER

Shyam Sai son of Shri Dhukan Sai, aged about 27 years. Occupatin agriculsturist resident of village Maini Post office Durgapara, Tah Bagicha Distt. Jashpur (Chhattisgarh)

R.R. No. 106/05
Presented by Shri. N.K. Singh
dated 11-01-05

VERSUS-

RESPONDENTS :

1. Chhattisgarh State Election Commission, Raipur (Chhattisgarh) through It's Secretary
2. Election Officer Panchayat, Tah Bagicha, Distt. Jashpur (CG)
3. Sub Divisional Officer, Bagicha, Tah. Bagicha, Distt. Jashpur (Chhattisgarh)
4. Returning Officer, Gram Panchayat Maini, Tah. Bagicha, Distt. Jashpur.
5. Sukhdeo Sai, son of Shri Rohidas Sai, aged about 42 years, occupation – agriculturist, Resident of village Maini, PO Durgapara, Tah. Bagicha, Distt. Jashpur (Chhattisgarh)

190/05
11/1/05

Free

(2)
4

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

(42)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP. 67/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	12.01.2005 Shri Rajeev Shrivastava, counsel for the petitioner. Shri V.V.S. Murthy, Deputy Advocate General for the State. Heard both the counsel. Learned Dy. Advocate General submits that copy of the preliminary objection filed in writ petition No.18/2004 between Santosh Gupta Vs. State of C.G. & others has been placed on the record of this matter and prayed that same may be taken on record. He further submits that objection regarding maintainability of this petition is raising in this case. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality, propriety and correctness of the order Annexure P-4 passed by respondent No.4-Returning Officer, whereby Returning Officer has rejected the nomination form of the petitioner to contest the election for the post of Panch from Gram Panchayat Maini on the ground that in view of the order dated 28.12.2004 passed by the Tehsildar, Bageecha in Revenue Case No.03-A-68/2004-05 (Annexure P-5) that the petitioner has encroached upon the government land. In this connection the relevant amended provision of Section 36(1)(q) of C.G. Panchayat Raj (Sanshodhan) Adhiniyam, 2004 envisages that no person shall be eligible to be an office bearer of the Panchayat who; (q) has encroached upon any land and buildings of Panchayat or Government. Perusal of the order of Tehsildar dated 28.12.2004 reveals that on a complaint made by the Patwari, P.C. No.20 Tehsil Bageecha the	

(43)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... 2 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Tehsildar initiated a revenue case against the petitioner herein alleging that he has encroached upon the Government land bearing Khasra Nos. 1227/1 & 1248 admeasuring 0.405 & 0.202 situated at Village Maini and based on that a show cause notice was issued to the petitioner to file his reply. It is not a case where the nomination form has been rejected on totally non-existent or irrelevant ground. The above provision of clause (q) of sub-section (1) of Section 36 of the Adhiniyam simply says that any person who has encroached upon the land or buildings of the Panchayat or Government is sufficient for attracting the above provisions. Therefore, the factual position arises in this case and where the question of fact or mixed question of facts and law is involved, the only remedy available to the petitioner is to file election petition and he is not entitled to seek interference with the election process by filing petition under Article 226/227 of the Constitution of India. In view of the above, the petition is liable to be dismissed and it is dismissed at the admission stage itself. However, the petitioner is at liberty to avail the alternative remedy available to him under the law. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan

SR 6(3)
14-1-05